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LAI KING LUNG

v.

PERBADANAN PENGURUSAN ANJUNG HIJAU & ANOR

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HIGH COURT MALAYA, KUALA LUMPUR
PRASAD SANDOSHAM ABRAHAM JC
[SUIT NO: S-22NCVC-242-2010]
25 APRIL 2011

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LAND LAW: *Strata title - Management corporation - Prohibiting unit owner from placing air-conditioned compressor outside unit on balcony - 'House rules' issued by developer - Relationship of - Whether management corporation passed by way of special resolution to adopt 'house rules' as by-laws - Strata Titles Act 1985, 3rd Schedule - Whether 'house rules'*

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ultra vires the Strata Titles Act 1985 - Strata Titles Act 1985, s. 44(1) & (2) - Paganetto v. Management Corporation Strata Title No. 1075

LAND LAW: *Strata title - By-laws - Management corporation prohibiting unit owner from placing air-conditioned compressor outside unit on balcony - 'House rules' issued by developer - Relationship of - Whether management corporation passed by way of special resolution to adopt 'house rules' as by-laws - Strata Titles Act 1985, 3rd Schedule - Whether 'house rules' ultra vires of the Strata Titles Act 1985 - Strata Titles Act 1985, s. 44(1) & (2) - Paganetto v. Management Corporation Strata Title No. 1075*

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The plaintiff was the registered unit holder of an apartment located in Bukit Jalil ('the said unit') and the first defendant was the management corporation which was duly registered under the

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Strata Titles Act 1985 ('the Act'). In essence, the plaintiff alleged that the first defendant through its servants and/or its agents had forcibly entered into the said unit to remove an air-conditioned compressor which was located on the balcony of the said unit. As such, the plaintiff's claim against the 1st defendant was for

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trespass, theft and damages ensuing from the said act. In its defence, the first defendant contended that the 'house rules', which governed the relationship between the plaintiff and the first defendant, prohibited the plaintiff from placing an air conditioned compressor outside the said unit on the balcony. These 'house

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rules' were issued by the developer before the first defendant was incorporated in order to regulate the use of common property and the façade of the building. Thus, the first defendant submitted

that their actions were authorised by the said 'house rules' but the plaintiff contended that the 'house rules' were *ultra vires* the relevant provisions of the Act. The issue between the parties was essentially an issue of law, *ie*, the validity or otherwise of the said 'house rules'. Thus, upon agreement from both counsel, this matter was dealt based on agreed issues of law which was to be determined by this court.

Held (allowing plaintiff's claim against the first defendant with costs):

(1) Since the first defendant had been incorporated, reference was made to s. 44 of the Act, in particular s. 44(1) & (2) of the Act, and also to the 3rd Schedule of the Act in relation to by-laws for the regulation of subdivided buildings. The by-laws passed must not infringe the 3rd Schedule of the Act. As such, the first defendant when incorporated must have passed by way of special resolution the by-laws. (paras 5, 6 & 7)

(2) Only those rules that were not likely to be altered from time to time should be made as by-laws. Whilst 'house rules' were permissible, they must follow and/or clarify or particularise the by-laws passed by special resolution pursuant to s. 44 of the Act and in compliance with the 3rd Schedule of the Act (*Paganetto v. Management Corporation Strata Title No. 1075*; foll). (para 8)

(3) There was a violation of s. 44(2) of the Act wherein the 'house rules' had not been issued by the first defendant but by the developer. Section 44(2) of the Act requires the first defendant to make additional by-laws. Furthermore, the 'house rules' were not in place because of existing by-laws but had been in place before the strata titles were issued. Hence, the 'house rules' were *ultra vires* the Act. (paras 8 & 12)

Case(s) referred to:

Paganetto v. Management Corporation Strata Title No. 1075 [1988] 1 SLR 268 ***(foll)***

Legislation referred to:

Strata Titles Act 1985, s. 44(1), (2), Third Sch

For the plaintiff - Christopher Lai King Lung (Lee See Loon with him); M/s Chris Lai, Yap & Partners

For the defendants - Pua Jing Yi (Ng Cheng Kiat with her); M/s Chur Assocs

Reported by Kumitha Abdul Majid

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JUDGMENT

Prasad Sandosham Abraham JC:

[1] The plaintiff (the 1st plaintiff originally before the 2nd plaintiff was struck of) is the registered unit holder of a apartment B located at blok D-15-8, Anjung Hijau Apartments at No. 8, Jalan 1/155B, 57000 Bukit Jalil, Kuala Lumpur (hereinafter referred to as the said unit). The 1st defendant is the registered management corporation bearing Certificate No. 1631 being duly registered under the Strata Titles Act 1985 (Act 318). This is so as C individual strata titles are available to the units. The court is unable to fathom why the 2nd defendant was brought in as a party but taking to account this matter is being disposed by issues of law, this question of 2nd defendant being brought in as a party by merely being a committee member of the 1st defendant was D deferred.

[2] The plaintiff's complaints are found in para. 5-11 of the statement of claim. In essence, the plaintiff is alleging the 1st defendant through its servants and or agents forcibly entered into E the plaintiff's unit to remove the air-conditioned compressor of the plaintiff's unit which was located on the balcony of the plaintiff's unit visible to the naked eye when looking at the façade of the units from the outside. The plaintiff's claim against the 1st defendant is for trespass, theft and damages ensuing. The plaintiff F obtained an injunction from this court to order the 1st defendant to return the air-conditioned compressor and thereafter the 1st defendant entered an appearance, filed a defence and applied to have the injunction to be set aside. There were also applications filed for security for costs, and amendment. The crux of the 1st G defendant's defence is that the house rules is the all encompassing rules that governs the relationship between the plaintiff and the 1st defendant and under the said "House Rules", the plaintiff was prohibited from placing an air-conditioned compressor outside the unit on the balcony. It is the 1st defendant's contention that their H actions were authorized by the house rules. The plaintiff however contends that the said house rules are *ultra vires* the relevant provisions of the Strata Title Act 1985.

[3] In the light of the fact, the issue between the parties was I essentially an issue of law ie, the validity or otherwise of the said House Rules, the court suggested to both counsel that this matter could be disposed of by way of issues of law. Both learned

counsel agreed with this suggestion and with their consent I proceeded to deal with the matter based on the agreed issues of law to be determined by this court. I heard oral submissions of both counsels and thereafter directed counsels to supplement their submissions with additional written submissions and on 30 March 2011, I delivered my decision and made the following orders ie,:

(i) Order in terms of the statement of claim of para. 32(c) **against 1st defendant only** as set below:

> 32. Oleh yang demikian, Plaintif-Plaintif menuntut secara bersama dari defendan-defendan:
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> (c) Satu deklarasi bahawa Defendan Kedua bertindak *ultra virus*, secara salah dan tidak salah dalam mengarahkan kakitangan-kakitangan mencerobohi hartanah Plaintif pertama pada 29 November 2010, 23 Disember 2010 dan 24 Disember 2010.

(ii) Damages to be assessed by the Timbalan Pendaftar;

(iii) Costs to the plaintiff to be taxed by the SAR;

(iv) Such further or other relief.

[4] In dealing with this matter, I am reminded of the oft quoted phrase "a man's home is his castle". However, when living in a unit along with the other unit holders in a condominium block, the castle, the moat and the grounds have to be shared. It therefore follows, there have to be rules and regulations to govern the relationship between different unit owners and the management corporation. Whilst it is true that an owner of a unit is entitled to furnish his property in any way he deems aesthetic, the principal of communitarian living within a condominium entails consideration of order and good taste for the common good. (See the case *Management Corp Strata Title Plan No 1378 v. Chen Ee Yueh*)

[5] In our present case, the 1st defendant relied on the house rules to justify its actions which require the air-conditioner compressor to be placed within the unit. The house rules are found in encl. 26 exh. FYL 13. It is clear that these house rules were effective 1 July 1988 (well before the 1st defendant was incorporated) and were issued by the developer, ie, the vendor (see the definition of management in the house rules). These rules were essentially to regulate the use of common property and the

facade of the condominium. Since the Strata Titles Act 1985 is applicable here as the 1st defendant has been incorporated, reference is now made to s. 44 of Strata Titles Act 1985 and in particular s. 44(1) & (2) which I have set out below:

> (1) The by-laws set out in the Third Schedule shall, as and from the opening of a book of the strata register be in force for all purposes in relation to every subdivided building or land and shall not be amended by the management corporation.
>
> (2) The management corporation may by special resolution make additional by-laws, or make amendments to such additional by-laws, not inconsistent with the by-laws set out in the Third Scheduled, for regulating the control, management, administration, use and enjoyment of the subdivided building or land.

[6] I also made reference to the 3rd Schedule of the Act headed (By-laws For The Regulation Of Subdivided Buildings). The by-laws passed must not infringe the 3rd Schedule to the Strata Titles Act.

[7] In my judgment, the 1st defendant when incorporated must pass by way of special resolution the by-laws.

[8] However if the 1st defendant was required for every rule to be laid down and made by way of by-laws this would cause practical problems which would disrupt harmonious condominium living. Only those rules that are not likely to be altered from time to time should be made as by-laws. However for instance the timing for the usage of sports recreational facilities, a restaurant if any could be implemented through the use of house rules. It is therefore my judgment that whilst house rules are permissible, they must follow and/or clarify or particularize by-laws passed by special resolution pursuant to s. 44 of Strata Titles Act 1985 and in compliance with sch. 3 of the said Act. In our case, these house rules are not in place because of existing by-laws but have been in place before the issuance of strata titles and therefore on that basis alone they are *ultra vires* the Strata Title Act.

[9] I make reference to the decision of the High Court of Singapore in *Paganetto v. Management Corporation Strata Title No. 1075* [1988] 1 SLR 268 where it was held by (Chao Hick Tin JC (as he then was)

(1) On the facts, it was clear that the management corporation had not in any way discharged its duties or exercised its powers unreasonably.

(2) It was also clear from ss 35(2) and 35(4) that the bye-laws "shall' be paramount. However, there was nothing in s. 35(4) which suggested that every additional rule, no matter how trivial, made by the management corporation for the orderly enjoyment of common property in the condominium must be made by way of bye-laws. The discretion rested with the management corporation. To say that every rule lay down by the management corporation had to be made by way of bye-laws would cause so much practical difficulties that it may undermine the very basis of condominium living. There must be flexibility in regard to these matters. It was plain good sense that only those rules which were important and which are not likely to be altered from time to time should be made as bye-laws. It was totally unreasonable to suggest that the management corporation, in exercise of its functions and duties laid down in the Act, may not make rules for the day to day running of the common facilities of the condominium.

[10] And I quote further the judgment of his Lordship at p. 3 of his judgment:

the argument advanced by the Plaintiff is that the management corporation may not make the house rules and enforce them against him without first going through the procedure of making them as bye-laws under s. 35(4) of the Act. It would be useful if I should set out in full the relevant provisions of s 35:

(1) Every subdivided building shown in a strata title plan shall be regulated by by-laws which shall provide for the control, management, administration, use and enjoyment of the lots and the common property.

(2) The by-laws shall include the by-laws set out in the Second Schedule which shall not be added to, amended or repealed by the management corporation.

(3) The by-laws set out in the Second Schedule shall, as and from the registration of a strata title plan, be in force for all purposes in relation to every subdivided building.

(4) The management corporation may by special resolution make by-laws, not inconsistent with the by-laws set out in the Second Schedule, for regulating the control, management, administration, use and enjoyment of the subdivided building.

A (5) The by-laws for the time being in force in respect of the subdivided building shall bind the management corporation and the subsidiary proprietors to the same extent as if they constituted properly executed agreements -

(a) on the part of the management corporation with the B subsidiary proprietors; and

(b) on the part of each subsidiary proprietor with every other subsidiary proprietor and with the management corporation, to observe and perform all the provisions of the by-laws. C

(12) Every occupier of a lot who commits a breach of any of the by-laws in the Second Schedule or makes default in complying with the provisions of the by-laws, and every subsidiary proprietor who is knowingly a party to the breach D or default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000.

It is clear from section 35(2) and (4) quoted above that the by-laws set out in the Second Schedule shall be paramount. All subsidiary proprietors are bound by those provisions. Indeed, a E breach, if any, of the by-laws is an offence. The management corporation may only make additional by-laws which are not inconsistent with the by-laws set out in the Second Schedule. But there is nothing in section 35(4) which suggests that every additional rule, no matter how trivial, made by the management corporation for the orderly enjoyment of common property in the F condominium must be made by way of by-laws. The discretion rests with the management corporation.

It is abundantly clear that under paragraph 3 of the Second Schedule, the management corporation has a duty to control, G manage and administer all the common property for the benefit of all the subsidiary proprietors. Under section 31(2)(e), the management corporation is given the power to do all things reasonably necessary for the enforcement of the by-laws set out in the second schedule. It must therefore follow that it is entitled to make house rules for those purposes. The fact that it could H have made some of the house rules as by-laws does not mean that it may not make house rules just as house rules. Section 35(4) talks of "may". Many of those things dealt with in the house rules are really matters of details and procedures, which may need to be altered from time to time in the light of I experience gained to ensure an orderly enjoyment by all subsidiary proprietors of common property. It is absurd to suggest that for

every addition or amendment to the house rules, no matter how insignificant, the management corporation has to call a general meeting to effect a special resolution pursuant to section 35(4) of the Act. And until the by-laws are made or amended, nothing can be done about the problems faced by the condominium. This will be the result of the plaintiff's argument which I reject. It is totally unreasonable to suggest that the management corporation, in exercise of its functions and duties laid down in the Act, may not make rules for the day-to-day running of the common facilities of the condominium. The house rules are needed to avoid conflicts which could easily arise.

As an illustration of the untenability of the argument of the plaintiff, I would refer to the proviso to paragraph 3 of the Second Schedule. That proviso states: "Provided that the corporation may by agreement with a particular proprietor grant him the exclusive use and enjoyment of part of the common property or special privileges in respect of the common property or part of it." Following from this proviso, it means that the management corporation could allocate a specific common property for the exclusive use of a proprietor. That will also mean that other subsidiary proprietors will be denied the use of that specific common property. And if house rules are made to implement that agreement, does it therefore follow that those particular house rules forbidding other subsidiary proprietors from using that specific common property is therefore *ultra vires* and void unless they are first made as by-laws?

In my opinion, there cannot be any doubt that paragraph 3 of the Second Schedule, read with section 31, gives authority to the management corporation to lay down all the detailed rules needed to ensure that the condominium is managed efficiently and that the common facilities are properly used and enjoyed fairly by all. The house rules are for the good of all the subsidiary proprietors/occupiers. To say that every rule laid down by the management corporation has to be made by way of by-laws would cause so much practical difficulties that it may undermine the very basis of condominium living. There must be flexibility in regard to these matters. It is plain good sense that only those rules which are important and which are not likely to be altered from time to time should be made as by-laws. After all, the management corporation is constituted not by anybody else but by the subsidiary proprietors themselves. If the council has not acted fairly or properly, an extraordinary general meeting can always be called by subsidiary proprietors pursuant to paragraph 10(2)(a) of the First Schedule to the Act.

[11] I am in agreement with the views expressed by his Lordship and I adopt the same in my judgment. It is to be observed the relevant provisions of the Strata Titles Act in Singapore is similar to ours.

[12] It is also to be noted that the house rules in question have not been issued by the 1st defendant but by the developer (referred to as the vendor) (see encl. 26 exh. FYL13). This is also clearly a violation of s. 44(2) which requires the 1st defendant to make additional by-laws. Therefore, the present set of house rules are at any rate *ultra vires* the Strata Titles Act. It is suggested that the 1st defendant take immediate steps by way of special resolution to adopt as by-laws these house rules and thereafter the 1st defendant would be in a position to issue house rules in respect of matters arising out of these by-laws.

[13] It is for these aforesaid reasons that the court made the orders that it did.

[14] As a post script to these proceedings, the court wishes to record its appreciation to all counsel appearing before it in this case for their submissions and authorities and research undertaken by them in this fairly new area of law.